

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

DAVID BUSTAMANTE,

Plaintiff,

v.

**POE IMPORTS, L.P., d/b/a POE
TOYOTA,**

Defendant.

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No.: 3:22-cv-13

NOTICE OF REMOVAL

Defendant POE IMPORTS, L.P. dba POE TOYOTA (“Defendant”) files this Notice of Removal removing the case styled *David Bustamante v. Poe Imports, L.P., d/b/a Poe Toyota*, 2021-DCV-4124 from the 34th Judicial District Court in El Paso County, Texas to this Court pursuant to 28 U.S.C. §§ 1331 and 1441. The grounds for removal are as follows:

PROCEDURAL BACKGROUND

1. On November 30, 2021, Plaintiff David Bustamante (“Plaintiff”) filed his “Original Petition” against Defendant in state court alleging claims for age discrimination under the Age Discrimination in Employment Act (“ADEA”) and Chapter 21 of the Texas Labor (“Chapter 21”) and for retaliation under the Family Medical Leave Act (“FMLA”).

2. Plaintiff served his Original Petition on Defendant on December 10, 2021. Defendant timely filed its Original Answer in state court on December 30, 2021. This removal is thus timely filed. True and correct copies of all pleadings served on Defendant are attached hereto.

FEDERAL QUESTION JURISDICTION

3. This Court has original jurisdiction in that Plaintiff has asserted claims under the ADEA, 29 U.S.C. §§ 621 *et seq.*, and the FMLA, 29 U.S.C. §§ 2601 *et seq.* The foregoing claims arise under the laws of the United States thereby invoking federal question jurisdiction pursuant to 28 U.S.C. §1331.

PROPER VENUE AND COMPLIANCE WITH REMOVAL PROCEDURE

4. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

5. Defendant will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Defendant will also promptly file a copy of this Notice of Removal with the Clerk of the 34th Judicial District Court, El Paso County, Texas, where the action is currently pending, also pursuant to 28 U.S.C. § 1446(d).

6. True and correct copies of all process, pleadings, and the orders served upon Defendant in the state court action are being filed with this notice as required by 28 U.S.C. § 1446(a) and attached hereto.

7. Pursuant to 28 U.S.C. § 1446(b), this Notice Removal is filed within thirty (30) days after service of the initial pleading setting forth a removable claim.

ACCORDINGLY, Defendant hereby remove Cause No. 2021-DCV-4124 from the 34th Judicial District Court, El Paso County, Texas on this 5th day of January 2022.

Respectfully submitted,

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By: /s/ Gilbert L. Sanchez
GILBERT L. SANCHEZ
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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the attorney for Plaintiff, John A. Wenke, Attorney for Plaintiff, 501 E. California Ave., El Paso, Texas 79902, on the 5th day of January, 2022.

- ☐ Regular Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- X Electronic Transmission: lawoffice@johnwenke.com
- ☐ Facsimile Transmission: (915) 351-9955

/s/ Gilbert L. Sanchez
GILBERT L. SANCHEZ